

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 IO-14 ISO-00 INRE-00 CAB-05 CIAE-00
COME-00 DODE-00 DOTE-00 EB-08 INR-10 NSAE-00
FAA-00 SSO-00 /053 W
-----094932 191552Z /43

O 191517Z JUL 78
FM USMISSION GENEVA
TO SECSTATE WASHDC IMMEDIATE 2271
INFO AMEMBASSY BERN PRIORITY
AMEMBASSY PARIS

UNCLAS SECTION 01 OF 02 GENEVA 11106

FOR L- LEE MARKS FROM SCHWEBEL

E.O. 11652: N/A
TAGS: EAIR, FR
SUBJECT: CIVAIR: CHANGE OF GAUGE

REF: STATE 175707

1. REUTER AND I, ON BEHALF OF FRENCH AND U.S. GOVERNMENTS, ON 13 JULY INFORMED RIPHAGEN OF SIGNATURE OF COMPROMISE AND HIS PROPOSED DESIGNATION. RIPHAGEN INFORMED ME JULY 18 THAT NETHERLANDS GOVT HAS AGREED TO HIS SERVING AS PRESIDENT OF THE TRIBUNAL AND ACCORDINGLY RIPHAGEN HAS DEFINITELY ACCEPTED APPOINTMENT.
2. I MET JULY 17 WITH FRENCH DCM FAVRE AND REVIEWED THE SUBJECT. HE SEES NO PROBLEMS. HE UNDERSTOOD CAFLISCH WOULD ACCEPT APPOINTMENT AS REGISTRAR AND THAT IMMUNITIES WILL BE ROUTINELY GRANTED AT INITIATIVE OF RESPECTIVE EMBASSIES IN BERN.
3. FOLLOWING POINTS EMERGED FROM CONVERSATION WITH CAFLISCH.

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(A) CAFLISCH WILL SERVE AS REGISTRAR ON UNDERSTANDING THAT HE WILL NOT BE EXPECTED TO BE IN GENEVA CONSTANTLY BEFORE MID-NOVEMBER. HE DEPARTS GENEVA AUGUST 19 FOR LOS CONFERENCE REMAINING NY UNTIL SEPTEMBER 15. IF NEEDS BE, HE WOULD BE PREPARED TO RETURN TO GENEVA THEN OR THEREAFTER BRIEFLY. IN ANY EVENT, HE PLANS TO RETURN FROM VIRGINIA MID-NOVEMBER, IN ADVANCE OF ORAL HEARINGS, AND

WOULD STAY IN GENEVA SOLIDLY THROUGHOUT ORAL HEARINGS, DELIBERATIONS OF TRIBUNAL, RENDERING OF DISPOSITIF, RENDERING OF AWARD, AND TRANSLATION AND PUBLICATION OF AWARD, WHICH HE ANTICIPATES COULD RUN AS LONG AS UNTIL END OF 1978. HE BELIEVES THAT, IN ALL, ARBITRATION WILL TAKE ABOUT TWO MONTHS OF HIS SERVICES FULL TIME. HE CAN ACCEPT APPOINTMENT ONLY IF HE CAN APPOINT A DEPUTY REGISTRAR OR SOME MEMBER OF REGISTRY WHO CAN ACT IN HIS STEAD TO CIRCULATE MEMORIALS AND PURSUE HOUSEKEEPING ARRANGEMENTS. FRENCH SEEM AGREEABLE. I RECOMMEND THAT APPOINTMENT BE OFFERED ON THIS BASIS.

(B) WHILE REGISTRAR IS OFTEN APPOINTED BY TRIBUNAL ITSELF, CAFLISCH DOUBTS WHETHER IT WOULD BE WORTHWHILE FOR EHRLICH TO COME TO GENEVA FOR HOUSEKEEPING MEETING OF TRIBUNAL WHICH, IF IT IS TO CATCH RIPHAGEN, REUTER AND CAFLISCH HERE, WOULD HAVE TO BE BY JULY 24 OR 25. HE WONDERED IF THERE COULD BE A MEETING IN WHICH I WOULD SUBSTITUTE FOR EHRLICH. I RESPONDED NOT A FORMAL MEETING OF THE TRIBUNAL AS SUCH, BUT IF WHAT HE CONTEMPLATES IS AN INFORMAL GATHERING OF HIMSELF, RIPHAGEN, REUTER AND MYSELF TO MAKE TENTATIVE HOUSEKEEPING DECISIONS WHICH PARTIES AND TRIBUNAL (WHEN IT MEETS IN NOVEMBER) COULD RATIFY, THAT WOULD BE GOOD IDEA.

(C) AS FOR CAFLISCH'S APPOINTMENT, IT COULD BE MADE NOW BY PARALLEL CABLES FROM FRENCH AND US GOVERNMENTS RATHER THAN LATER BY TRIBUNAL.

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(D) CAFLISCH RECOMMENDS SUCH IMMEDIATE APPOINTMENT SO THAT, BEFORE HIS AUGUST 19 DEPARTURE, HE CAN ENGAGE REGISTRY SECRETARIAT, MAKE ARRANGEMENTS FOR SITE AND SIMULTANEOUS TRANSLATION, PRODUCTION OF TRANSCRIPTS, ETC. I AGREE.

(E) I SUGGESTED TO CAFLISCH THAT HE PREPARE AN INFORMAL NOTE SETTING OUT VARIOUS HOUSEKEEPING NEEDS AND ESTIMATE OF EXPENSES, WHICH HE WILL DO AND GIVE US PRONTO.

(F) CAFLISCH REQUESTED THAT ARRANGEMENTS BE MADE TO TRANSFER A MODEST AMOUNT OF FUNDS TO HIM WHEN APPOINTED, IN NEXT WEEK OR TWO, SO THAT HE CAN PUT HOUSEKEEPING ARRANGEMENTS IN TRAIN AND MAKE REQUISITE COMMITMENTS BEFORE HE DEPARTS. A SUBSTANTIAL SUM WOULD BE REQUIRED BY MID-NOVEMBER.

(G) AS TO SITE OF ORAL HEARINGS, HE RECOMMENDS NEW ILO BUILDING, WHICH HAS BEEN SITE OF TWO RECENT ARBITRATIONS, ON BEAGLE CHANNEL AND BRITISH CHANNEL CONTINENTAL SHELF. COST IS REASONABLE. HE BELIEVES DELIBERATIONS OF TRIBUNAL COULD TAKE PLACE, PROBABLY WITHOUT CHARGE, AT GRADUATE INSTITUTE OF INTERNATIONAL STUDIES WHERE HE TEACHES.

(H) CAFLISCH SAYS THAT THERE ARE NO LOCAL IMMUNITIES THOUGH HE WILL SET THINGS UP WITH AUTHORITIES OF CANTON OF

GENEVA; FEDERAL IMMUNITIES SHOULD BE ARRANGED IN BERN.

(I) AS ELEMENT OF HIS RENUMERATION, CAFLISCH WOULD WANT HIS TRAVEL FROM U.S. TO GENEVA TO BE PAID AS OFTEN AS REQUIRED. HE WOULD WISH TO MINIMIZE TRAVEL, HOPEFULLY TO ONE ROUND TRIP, PERHAPS TO TWO.

(J) CAFLISCH RECOMMENDS THAT TRIBUNAL MEET A DAY OR TWO BEFORE SCHEDULED HEARINGS TO ADOPT ITS RULES AND TO MAKE FORMAL DECISIONS ON HOUSEKEEPING ARRANGEMENTS WHICH NECESSARILY WILL HAVE BEEN PRACTICALLY DECIDED EARLIER

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O 191517Z JUL 78

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 2272

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UNCLAS SECTION 02 OF 02 GENEVA 11106

FOR L- LEE MARKS FROM SCHWEBEL

AS PER FOREGOING.

(K) AMONG QUESTIONS SUCH ARRANGEMENTS POSE ARE: DO PARTIES WANT SIMULTANEOUS TRANSLATION? VERBATIM RECORDS PRODUCED THE DAY OF ARGUMENT? OFFICE SPACE?

(L) A FURTHER MORE SUBSTANTIVE QUESTION IS, UNDER WHAT RULES WILL THE TRIBUNAL OPERATE? IF THE COMPROMIS DOES NOT SPECIFY THE RULES, PRESUMABLY TRIBUNAL WILL, BUT THIS IS A QUESTION ON WHICH THE PARTIES SHOULD HAVE THEIR VIEWS. DRAFT CODE OF ARBITRAL PROCEDURE ADOPTED BY INTERNATIONAL LAW COMMISSION AND UNGA WOULD BE A SUITABLE MODEL.

(M) CAFLISCH BELIEVES THAT TRIBUNAL WILL WISH TO DECIDE ON RENUMERATION OF THE ARBITRATORS AND THE REGISTRAR, BUT PRESUMES THAT IT WILL ACT WITH DUE REGARD TO WISHES OF THE PARTIES. IMPLICATION IS THAT FRENCH AND USG SHOULD HAVE AN IDEA OF WHAT THEY ARE PREPARED TO PAY SO THAT AN UNDERSTANDING CAN BE REACHED WITH RIPHAGEN ET AL.

4. I WOULD APPRECIATE IMMEDIATE INSTRUCTIONS ON
WHETHER TO SEEK INFORMAL MEETING JULY 24 OR 25 PER FORE-
GOING, AS WELL AS COMMENTS ON OTHER POINTS MADE. RIPHAGEN
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AND REUTER WOULD CERTAINLY BE AGREEABLE TO SUCH A MEETING.

5. TEXT

OF COMPROMIS JUST RECEIVED. IT TREATS A NUMBER
OF THE POINTS RAISED ABOVE. I NOTE PAR 5 OF COMPROMIS
SPECIFIES THAT THE TRIBUNAL SHALL, AFTER CONSULTATION
WITH THE TWO AGENTS, APPOINT A REGISTRAR. DO YOU
CONTEMPLATE CONVENING TRIBUNAL TO DEAL WITH THE
REGISTRAR'S APPOINTMENT AND OTHER HOUSEKEEPING DECISIONS?
IT DOES NOT SEEM WORTH THE TROUBLE. ALTERNATIVELY THE
AGENTS COULD PROPOSE THE APPOINTMENT OF CAFLISCH
TO THE MEMBERS OF THE TRIBUNAL AND THEY COULD ACCEPT IT
WITHOUT ACTUALLY MEETING. E.G. A LETTER COULD BE SIGNED
BY MEMBERS OF THE TRIBUNAL ACCEPTING CAFLISCH AND
AUTHORIZING HIM, IN CONSULTATION WITH THEM, TO APPOINT A
DEPUTY. THERE IS PRECEDENT FOR PROCEEDING IN SUCH A
FASHION (HOLIDAY INN V. MORROCCO). VANDEN HEUVEL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SALES, AIRCRAFT, AVIATION AGREEMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978GENEVA11106
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780296-0610
Format: TEL
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780744/aaaabksu.tel
Line Count: 195
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 32d0b370-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 175707
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1959842
Secure: OPEN
Status: NATIVE
Subject: CIVAIR: CHANGE OF GAUGE
TAGS: EAIR, FR
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/32d0b370-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014